CRP 33/2007
BEFORE
HON'BLE MR. JUSTICE H.N. SARMA
C.R.P. No. 33/2007

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7.2. 2007

Heard Mr. S. Sarma, learned counsel for the petitioner.

This petition is filed challenging the legality and validity of the judgment and order passed in Misc. Appeal No. 23/2006 dated 8-1-2007 by the learned Civil Judge (Senior Division), Kamrup thereby rejecting the appeal preferred by the petitioner. Challenging the order in injunction petition passed in Misc. (J) case No. 217/2006 dated 28-6-2006 passed by the learned Civil Judge (Junior Division),No. 2, Guwahati.

The petitioner as plaintiff instituted Title Suit 318/2006 inter-alia praying for permanent injunction, ejectment of the defendant from the suit premises and further declaration that the action of the defendant in constructing drains in question is illegal and void of jurisdiction. The facts of the case disclose that defendant i.e PWD authorities have undertaken the work for development of Bijoy Nagar Dakhala road by strengthening the market portion including provision of an open pucca drain and cross culverts in the general areas. The grievances of the petitioner is that the drains proposed to be constructed, falls within the patta land of the petitioner and as such the defendant i.e the PWD authorities had no authority to construct the same by encroaching into the patta land without acquiring the land under the provision of law. The learned trial court after the relevant considerations, rejected the prayer for injunction and the learned appellate court also maintained the said order.

The interference of this court under Article 227 of the Constitution of India again on such concurrent findings of both the courts below are rather restrictive. The learned courts below rejected the prayer of injunction upon relevant considerations of the issue involved. The state being the ultimate owner of the land, the petitioner who is the patta holder/lessee in respect of the said land is bound to follow the terms of the lease. The proposed construction of the road and the drain is for the greater interest of the public at large. Whatever the grievances the petitioner can very well be urged at the time of hearing of the suit. I find no justification in interfering with the impugned order in exercising the power under Article 227 of the Constitution of India, when the courts below refused to grant such discretionary order on relevant consideration.

However on the submission made by Mr. Sarma that in passing of the impugned order by the learned courts below pertains to the finding on the merit of the suit which has been arrived at certain finding on the merit of the suit that may prejudice to him in final determination of the suit, it is made clear that on none findings on the merits of the suit that has been arrived at in passing the impugned order would be considered at the final hearing of the suit and the suit is to be decided upon the proved facts that might emerge during the course of the trial after recording necessary evidence.

Subject to the aforesaid observations this revision petition stands dismissed.

JUDGE

arup